End User License Agreement (Software License Agreement)

Preamble

The customer (hereinafter also referred to as "**Licensee**") is an entrepreneur as defined by § 14 BGB (German Civil Code) and acquires standard software from Bihl+Wiedemann GmbH (Floßwörthstraße 41, 68199 Mannheim, hereinafter referred to as "**Licensor**") in the course of trade.

1. General Conditions

(1) These contractual license terms are a substantial and inseparable part of the software purchase agreement between Licensee and Licensor. No later than by installing, copying or using the Licensed Software in any other way, the Licensee consents to the following contractual license terms as End User License Agreement (hereinafter referred to as "EULA"). If the Licensee does not agree to the terms of this EULA, the installation, copy or use of the Licensed Software in any other way is prohibited by contract. If the Licensee purchases the Licensed Software by downloading, instead of returning the software, the download should be cancelled and all data which have already been downloaded in the EDP system or network of the Licensee should be deleted.

(2) The provisions specified hereinafter shall regulate the permitted use of the Licensed Software regardless of whether it is provided on a data carrier or for download from a computer network. The EULA shall further regulate the providing of software test versions solely for evaluation purposes during a limited period of time and of software pre-release solely for testing purposes.

(3) Any terms and conditions of the Licensee conflicting with or deviating from this EULA shall not become subject matter of this End User License Agreement between Licensor and Licensee, unless the Licensor explicitly consents to the application thereof in writing. This EULA shall apply even if the Licensor performs delivery to the Licensee without reservation notwithstanding his knowledge of terms and conditions of the Licensee conflicting with or deviating from this EULA.

(4) In addition to this EULA the General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry ("**ZVEI-Delivery Terms**") of the ZVEI (German Electrical and Electronic Manufacturers' Association) shall apply to all software purchase agreements in their respective current status. In case of any conflict between the ZVEI-Delivery Terms and this EULA, the terms of this EULA shall prevail. Individual agreements between the parties shall prevail over this EULA or the ZVEI Delivery Terms to the extent they deviate from this EULA or from the ZVEI-Delivery Terms.

2. Definitions

Licensed Software	Constitutes computer software including accompanying User Documentation. Unless the following provisions of this EULA expressly state otherwise, the term shall also include License-Updates and License-Upgrades of the original version and also Full and Test Versions.
Full Version	Software license with the full functionality of the Licensed Software. The customer acquires and is hereby granted a non-exclusive, transferable and temporally unlimited right to use the Licensed Software.
Test Version	Temporary right to use Licensed Software granted solely for evaluation purposes of Licensed Software.
Software Pre-releases	Preliminary versions of the Licensed-Software (Beta Version) provided to Licensee for test purposes that may not be used in the area of production. It may contain faults.
User Documentation	All the supporting contractual software documentation including user manual (digital user manual), which is supplied in electronic form or in paper form. The product data sheet can be downloaded from the homepage of the Licensor.
EDP System	The term EDP System denotes a single computer, computer workstation or server.
Network	In the following, a network is understood to be the linking of EDP Systems within the Licensee's company.
Single-User-License	One license of Licensed Software for each of the Licensee's EDP systems, which may only be used on one (1) EDP system at any one time.
Software-Update	Describes a version of the Licensed Software with the same or more advanced functions with minor improvements for the purpose of removing errors, faults or violations, or the removal of malfunctions in the Licensed Software.
Software-Upgrade	Describes a higher level (new version) of the Licensed Software or a version with enhanced functionalities or features (with a new version number if necessary).
License-Update	Constitutes an updating of an existing license and the associated usage right for a new version of the Licensed Software with the same license scope.
License-Upgrade	Constitutes an extension of the license scope of Licensed Software based on an existing license.

3. Subject matter of this EULA

(1) The Licensor provides the Licensee with the Licensed Software for permanent use subject to the following provisions - in particular those contained in section 5 - on a data carrier or by making the Licensed Software available for download on the internet, including the User Documentation. When the User Documentation is available as an electronic version online, there is no additional obligation to provide a printed version of the User Documentation.

(2) The Licensor grants the Licensee the Licensed Software either on a data carrier (e.g. CD-ROM) or by way of downloads including User Documentation. If the Licensed Software is supplied by way of download, the Licensor shall make available to the Licensee the Licensed Software and User Documentation on his website for download.

(3) Test versions of the Licensed Software – as well as Software Pre-releases – are covered by this EULA. The Licensee receives by way of a lending agreement, a free, non-exclusive, non-transferable and non-sublicensable right to use Licensed Software, in order to install the Licensed Software once and only to use it for testing purposes. The duration is limited to the period of time specified in the respective Software License. After the trial period, the Test version can be unlocked with a key for temporally unrestricted Full Version software by payment of the royalties.

(4) Maintenance, installation or configuration services as well as technical support are not covered by this EULA and shall be subject of a separate agreement.

4. Royalties, payment and default

If the Licensor and the Licensee have agreed on a software purchase, the following shall apply:

(1) The royalties are due for immediate payment upon conclusion of the contract. The Licensee can effect payment of the royalties by credit card or on account; the Licensor reserves the right to demand payment in advance in individual cases. In case of any purchases of the Licensed Software made from the webshop of the Licensor, payment of the royalties must be made either by credit card or by advance payment. Any shipping costs are shown to the Licensee in the order overview before pressing the order button.

(2) If the Licensee is in default of payment, he shall pay the statutory default interest of eight (8) percentage points above the currently applicable basic interest rate. Licensor reserves the right to assert any further claims for damages.

5. Extent of the license

(1) The Licensor grants to the Licensee – subject to the condition of full payment of the royalties according to section 4 of this EULA – a non-exclusive, unrestricted, worldwide right to use the Licensed Software according to the following conditions.

(2) Until full payment of the agreed royalties in accordance with section 4 of this EULA, all data carriers and User Documentation for the Licensed Software provided to Licensee are subject to an extended retention of title.

(3) The Licensed Software may be used simultaneously only by a maximum number of natural persons (individuals) corresponding to the respectively total number of licenses acquired by the Licensee. If the Licensee has acquired a single-user-license, he is not entitled to use the Licensed Software on more than one (1) EDP System at the same time. The Licensee is entitled to use the Licensed Software on all his available hardware. If the Licensee changes the hardware, he is obligated to delete the Licensed Software which has been installed on the hardware used before.

(4) Use of the Licensed Software on more than one (1) EDP System at the same time is only permitted if the Licensee has acquired the respective number of copying licenses as provided in section 6 of this EULA or the necessary number of Single-User-Licenses.

(5) If the Licensee has only acquired Software-Updates or Software-Upgrades to an existing original version, he is only entitled to use these Software-Updates or Software-Upgrades for the original Licensed Software if he owns it and uses it and is the holder of a license valid for the original Licensed Software.

(6) The right to use the Licensed Software includes the right to duplicate the Licensed Software if it is necessary in order to achieve the contractual purpose of this EULA. Duplications include the installation of Licensed Software from the data carrier or from a download medium – e.g. through a link on the internet – on the hard disk, in the mass storage or cache. If the Licensee has acquired further copying licenses according to section 6 of this EULA, he is also entitled to duplicate the Licensed Software on portable storage media (CD-ROM, USB stick or others).

(7) The Licensee may only use the functionalities and features of the Licensed Software within the scope of the relevant license. Extension of the license scope shall however be possible by acquiring implementing an appropriate license upgrade.

(8) The Licensee is entitled to sell the original software to third parties in accordance with the following terms: A resale to third parties is subject to the condition that the Licensee informs the Licensor without any request and in due time in advance about the (company) name and address of the third party which will be acquiring the Licensed Software and the usage rights before reselling it. In addition, the Licensor shall be informed about the date of sale. In this case, the Licensee will not be entitled any more to use the Licensed Software from the date of the resale and he is obligated to remove all installed copies of the Licensed Software program from his EDP System or its networks, to delete all on other media located copies and to hand it over to the Licensor. On request of Licensor, the Licensee will confirm the full implementation of these measures referred to in writing and, if appropriate, confirm it by an affirmation in lieu of an oath.The Licensed Software can only be resold subject to a complete transfer of the Licensed Software. A transfer of a part of the license – or the splitting-up of several Single-User-Licenses acquired as a package and its partial resale – are not permitted.

(9) The Licensee is in no way entitled to let, lease or lend the Licensed Software to any third parties. He is furthermore not entitled to manipulate the Licensed Software or make any other changes in the Licensed Software. In any case, the Licensee shall not be entitled to sublicense the Licensed Software, to make it publicly available by wire or wireless means or provide it to third parties in return for or without payment.

(10) The Licensee is not entitled to modify, decompile or decrypt the Licensed Software. The Licensed Software's monitoring functions may not be deactivated. Changing, modifying or adapting the Licensed Software, its User Documentation or sections thereof in any way are also prohibited if such actions exceed the limits of §§ 69a UrhG (German Copyright Act) or its subsequent enactments.

(11) The Licensee is entitled to create one (1) backup copy of the Licensed Software, which has to be marked clearly, provided that it is necessary for saving its future use. The Licensee shall clearly identify the backup copy as "Backup copy", mark the date of acquisition of the Licensed Software, the date of creation of the backup copy as well as a manufacturer's copyright notice. All copyright notices pertaining to the original Licensed Software must be adhered to and accepted. The Licensed Software may not be copied onto data exchange systems or other similar systems nor made available onto exchange platforms.

6. Copying license and corporate license

(1) The Licensee has the right to acquire copying licenses from the Licensor, which will entitle him to make copies of the Licensed Software on portable data carriers. The extent to which the right to make copies is granted shall be determined according to the provisions of sections 5 and 6 of this EULA.

(2) The Licensee is entitled to produce as many copies of the Licensed Software as the number of copying licenses he has acquired.

(3) The copying license does not entitle the Licensee to make further copies of the copies produced or to sell or transfer the copies which have been produced. The Licensee undertakes to inform the Licensor without any further request about the total number copies he has produced, to give him written evidence of them and – upon written request – show him the copies.

(4) If the Licensee acquires a corporate license for the use of the Licensed Software on multiple computers of its EDP System, the Licensee is entitled to produce as many copies as agreed with the Licensor, to install the Licensed Software on multiple computers or simultaneously use the Licensed Software at more than one workplace. Where applicable, the corporate license may only entitle to produce the maximum number of copies acquired by the Licensee, to use the Licensed Software according to the provisions of this EULA and on the maximum numbers of computers or at workplaces of the Licensee`s legal entity. The Licensee as the holder of a corporate license shall not be entitled to use the Licensed Software on computers or at workplaces of third parties or its affiliated companies in the sense of Section 15 German Stock Act (Aktiengesetz).

7. Infringement of licenses

(1) In the event of a violation of the provisions of Sections 3 to 6 of this EULA by Licensee, the Licensee shall immediately inform the Licensor and pay a contractual penalty – without prejudice to any claims for damages –. This contractual penalty amounts to EUR 5.000,-- for each act of infringement. The Licensee however reserves the right to prove that the Licensor has suffered less or even no damages. Any contractual penalty paid will be set off against the Licensor's claim for compensation.

(2) In the event of an infringement of his Licensed Software, the Licensor is entitled – without prejudice to any claims for damages – to rescind the EULA including the software purchase agreement. In this case, the Licensee undertakes to immediately and without further request return to the Licensor all Licensed Software including all User Documentation. If any backup copies have been made or any copies have been produced under copying licenses, these have to be destroyed immediately. Any software installed on hardware of the Licensee has to be deleted. Written evidence of the destruction and deletion has to be assured to the Licensor on oath at first request.

8. Impossibility of performance

The Licensor shall not be held responsible for delays in delivery or performance due to acts of God or events which do not just temporarily severely hamper or totally prevent the Licensor from performing – this includes disruptions in operations, strikes, blockades, official arrangements, a lack of raw materials, energy supply problems, mobilization of troops, civil unrest etc., even if the Licensor's supplier or his suppliers are affected – even in the event of periods and deadlines with binding agreements. These delays entitle the Licensor to postpone the delivery or performance by the duration of the obstacle plus an appropriate startup time. Should impossibility of performance persist longer than six (6) months, Licensee shall have the right or to fully or partly withdraw from the respective software purchase agreement as a result of part of it not yet being fulfilled. If the Licensee has already paid any purchase price in full or in part at this time, the Licensor undertakes to immediately refund the payment made to the Licensee.

9. Warranty claims

(1) The Licensee undertakes to inspect the Licensed Software immediately after it has been delivered by the Licensor or after its download, as far as this is possible in the ordinary course of business and, if there is any defect, to immediately give notice to the Licensor.

(2) If the Licensee fails to give notice of the defect in due time, the Licensed Software is considered as approved, unless the defect is one which could not be recognized during the inspection. If such a defect appears, the notice has to be made immediately after the defect could have been discovered; otherwise the product is considered to be approved even considering this defect. To maintain the rights of the Licensee, it is sufficient to send off the notice to the Licensor in time. The foregoing provisions shall not apply if and in as far as the Licensor has concealed a defect fraudulently.

(3) The Licensed Software shall be considered defective if it does not have the stipulated qualities at the date of the transfer of risk, or if it is not fit for the contractually agreed use.

(4) There is no defect if the Licensee has intervened himself, or through any third parties, in the Licensed Software without the prior written consent of the Licensor and the defect has appeared after the intervention. The Licensee is allowed to provide evidence of the fact that the Licensed Software defect was not caused by the intervention. There is also deemed to be no defect if the Licensed Software is used on hardware or on an operating system which does not meet the requirements which have been laid down and defined in this EULA or in the product specifications as compatible and recommended framework.

(5) If there is any defect, the Licensor is entitled to choose the option of remedying the defect or delivering a substitute for the Licensed Software (subsequent performance). Removal and installation costs shall not be considered as a cost of the subsequent performance.

(6) The Licensor can make subsequent performance conditional on the fact that a part of the agreed royalties which is adequate in proportion to the extent and gravity of the Licensed Software defect has already been paid by the Licensee.

(7) Subsequent performance is considered to have failed after the third unsuccessful attempt. If subsequent performance fails, the Licensee is entitled to withdraw from the agreement.

(8) The limitation period for any warranty claims shall be twelve (12) months of intended use. This period commences with the supply of the Licensed Software or its download by the Licensee.

(9) Claims made by the Licensee due to the expenses required for subsequent performance, especially transport, journey, operating and material costs, are excluded if the expenses rise because the Licensed Software has been subsequently transferred to a site other than the Licensee's branch unless the transfer corresponds to his intended use.

(10) The Licensee only has the right of recourse against the Licensor in accordance with § 478 BGB (German Civil Code) (recourse of the entrepreneur) in so far as his customer is a consumer and the Licensee has not entered into any additional agreements with his customer on legal warranty claims. Section 9.8 applies accordingly to the scope of the licensee's right of recourse against the Licensor in accordance with § 478 Paragraph 2 BGB (German Civil Code).

(11) The Licensor is only liable for the loss of data and/or programs to the proven amount of the costs that would be incurred assuming the Licensee carries out regular data back-ups appropriate to the application, thereby ensuring that the lost data can be restored with a reasonable effort.

(12) The Licensor shall be liable without limitation for all damages caused intentionally or due to the Licensor’s gross negligence, for damages to life, limb or health as well as in accordance with the provisions of the German product liability law (Produkthaftungsgesetz). In case of a slight negligence with a breach of cardinal obligations that fundamentally compromise the purpose of the contract, the liability of the Licensor is limited to the amount predictable and typical for the type of transaction in question for the Licensor. Any other liability of the Licensor is excluded, unless stated otherwise in sections 9, 11 or 12 of this EULA.

(13) The Licensor does not grant any warranty. The Licensee can only invoke a promise of warranty from the Licensor if this has been given in writing by the Licensor and was expressly described as warranty.

10. Software Pre-releases

(1) The Licensor and Licensee can agree on the provision of Software Pre-releases. Software Pre-releases can be identified in particular by them being marked "Beta", "Release Candidate", "Prototype” or by similar labels. The provision of Software Pre-releases shall be finally regulated in the following, unless any individual arrangements or other agreements have been made.

(2) The Software Pre-release is given to the Licensee free of charge as lend for test purposes only. It is not intended for use in the course of business and shall not be used on any EDP systems or networks which are used for ongoing business operations. The Licensor shall not be liable for any damage suffered by Licensee using the Pre-release software version.

(3) With the Software Pre-release, the Licensee acquires the right to use this software as provided in this section 10 for the period of time agreed upon. The Licensor is entitled to terminate the lending agreement at any time and demand the immediate interruption of the use of the Pre-release software and its return and deletion from the computers, EDP systems and networks of the Licensee.

(4) The Licensee undertakes to notify the Licensor in writing of all error messages, operational faults etc., in describing how the fault developed and when and where it appeared.

(5) The Licensor is not liable for any damages which are caused by a violation of the above provisions by the Licensee.

11. Liability

(1) The Licensor shall be liable without limitation for all damages caused intentionally or due to the Licensor’s gross negligence, for damage to life, limb or health as well as in accordance with the provisions of the German product liability law (Produkthaftungsgesetz). In case of a slight negligence with a breach of cardinal obligations that fundamentally compromise the purpose of the contract, the liability of the Licensor is limited to the amount predictable and typical for the type of transaction in question for the Licensor. Any other liability of the Licensor is excluded, unless stated otherwise in sections 9, 11 or 12 of this EULA.

(2) The limitation stated in section 11.1 also applies if the Licensee demands compensation for futile expenses instead of a claim for compensation for damages rather than performance itself.

(3) If the liability for damages against the Licensee is excluded or limited, this also applies to the personal liability for damages of the Licensor's workers, employees, colleagues, representatives, and vicarious agents.

(4) Compensation for damages which the Licensee incurs when using Beta versions, Pre-release versions, patches and/or prototypes, that are still at the development stage and have not yet been approved, is excluded. This shall not apply to damages claims based on intent or gross negligence as well as to claims resulting from damages to life, limb or health and claims according to the provisions of the German product liability law (Produkthaftungsgesetz).

12. Proprietary rights/defects of title

(1) As far as Licensor renders the Licensed Software in accordance with production descriptions, plans, drawings, instructions or any other documents of the Licensee or in accordance with devices obtained from him for reproduction, Licensee shall guarantee that with the execution of the order no rights of third parties, especially no industrial property rights or copyrights (hereinafter referred to as “IPR“), are infringed directly or indirectly. In particular, the non-infringement of the rights of third parties shall insofar not constitute a stipulated condition of the delivery or performance to be rendered by Licensor. Licensor shall not be obligated to independently verify conflicting rights of third parties. However, Licensor shall inform Licensee about any rights of third parties that became known to him.

(2) In cases of section 12.1 the Licensee shall indemnify Licensor against any claims by third parties and compensate any damages that might accrue to Licensor upon first request.

(3) In the event a third party asserts a claim against Licensor to refrain from further performance, production or delivery of the Licensed Software covered in cases of section 12.1 with reference to a property right position, a right of use or an intellectual property, the Licensor shall be entitled – without examining the legal position – to withdraw from the order and demand compensation from Licensee for his expenses incurred so far.

(4) Unless otherwise agreed in writing, the Licensor shall only be held liable that Licensed Software is free of commercial proprietary rights and copyrights belonging to third parties in the country where the delivery site is located. If a third party asserts justified claims against the Licensee due to the infringement of proprietary rights by the performances made by the Licensor in accordance with this EULA, the Licensor is liable to the Licensee within the period laid out in section 9.7 as follows:

(a) The Licensor may at his own discretion and at his own cost obtain a right of use for the contractual software or is allowed to replace the software or change it in a way that the propriety rights are not infringed. If the Licensor is not able to do this under appropriate conditions, the Licensee is entitled to the legal rights to withdraw or mitigate.

(b) The Licensor's obligation to pay compensation for damages is based exclusively on section 9, 11 and 12.

(c) The Licensee shall immediately notify the Licensor of any such claim asserted by a third party in writing and leave any protective measures and settlement negotiations to the discretion of the Licensor. If the Licensee stops using the performance in order to reduce the level of damages or for any other compelling reasons, he undertakes to inform the third party that his ceasing to use the performance is not linked to recognition of an infringement of his proprietary rights.

(5) Claims by the Licensee are excluded if he is responsible for the infringement of proprietary rights.

(6) Claims by the Licensee are also excluded if the infringement of proprietary rights is caused by the Licensee's special requirements, by usage not intended by the Licensor or the fact that the Licensee has changed the performance or used it in conjunction with products not supplied by the Licensor.

(7) In the event of infringements of proprietary rights, the terms of sections 9.6 and 9.8 also apply accordingly for the claims asserted by the Licensee which are laid out in section 12.4 a).

(8) In the event of other defects in title, the terms of section 9 regarding defects apply accordingly.

(9) More extensive claims or claims other than those covered by this section 12 made by the Licensee against the Licensor and his vicarious agents are excluded on the grounds of a defect in title.

13. Export

(1) It is expressly pointed out to the Licensee that in accordance with the relevant export conditions of the Federal Republic of Germany, the European Union and/or the United States of America, exporting the Licensed Software may be subject to the duty to obtain a permission or may be excluded – e.g. due to their nature or intended use or final destination – and that infringement of such conditions is subject to prosecution. The Licensee is therefore responsible for strictly observing all national or international relevant and applicable export conditions and obtaining the approvals that may be required. With regard to this, the Licensee in particular undertakes to check and ensure that

- if the supplied Licensed Software may only be supplied for usage relating to armament, nuclear technology or weapons technology and/or supplied to a recipient in the military with the approval of the relevant and in particular national authorities, this approval is obtained in advance in the event of resale;
- the Licensed Software is not being delivered to companies and individuals listed in the “Denied Persons List” of the US Department of Commerce;
- the Licensed Software is not being made available to companies and individuals listed in the “Specially Designated Nationals and Blocked Persons List” of the US Department of the Treasury or the EU-Council Regulations (EC) No 2580/2001 and (EC) 881/2002;
- the relevant UN resolutions, EC Council Regulations and German laws and lists belonging to the German authorities responsible are observed;
- the “Entity List“ of the US Department of Commerce is observed;
- the Licensed Software is not being delivered to people who are listed on the “Unverified List” of the US Department of Commerce.

(2) Should the Licensee infringe the above obligations, the Licensee will indemnify the Licensor from all claims at first request and will provide full compensation for damages which Licensor's suppliers, third parties or state and/or international bodies or organizations assert against the Licensor.

(3) The contractual performance of the Licensor shall require that there are no hindrances to performance on the grounds of national or international regulations, especially export control provisions, embargos or other sanctions. The Licensor and Licensee shall undertake to produce all information and documents required for export, shipment and import. Delays due to export inspections or authorization procedures shall cause deadlines and delivery times to be suspended. If the required authorization is not granted, the performance of this EULA shall be regarded as not possible; Licensee shall not be entitled to claim for damages with respect to the aforementioned exceeding of deadlines.

14. Setoff/retention

The Licensee is only entitled to set off claims against the Licensor if his counterclaims have been recognized by declaratory judgment or are undisputed. The assertion of any rights of retention by the Licensee based on any claims other than those under this EULA shall be excluded.

15. Final provisions

(1) Any amendments and addenda to this EULA must be made in writing. This shall also apply to a termination, modification or a renunciation of the written form for this requirement.

(2) This EULA shall be governed exclusively by the law of the Federal Republic of Germany; United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(3) In the case of any disputes between the contractual parties arising out of or in connection with this EULA, the registered office of the Licensor is agreed to be the place of performance and jurisdiction. The Licensor is entitled to sue the Licensee at his general place of jurisdiction or at the place of the copyright or intellectual property rights infringement. The Licensee acknowledges that in the IT-industry it is common practice to agree upon a place of jurisdiction in general terms and conditions.

16. Severability clause

Should individual provisions of this EULA be or become invalid, the validity of the remaining regulations shall remain hereby unaffected. The Licensee und Licensor shall replace the invalid condition by a regulation whose intended legal and economic purpose is as close as possible to that of the invalid regulation. The same shall apply if a loophole requiring regulation or supplementation becomes apparent during the execution of this EULA.